

AMENDED IN SENATE JULY 27, 2003

AMENDED IN SENATE JULY 15, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY MARCH 27, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1209

Introduced by Assembly Member Nakano

February 21, 2003

An act to amend Section 6254 of, ~~and to amend and repeal Section 4426 of,~~ the Government Code, relating to public agency security.

LEGISLATIVE COUNSEL'S DIGEST

AB 1209, as amended, Nakano. Public agency security: confidential information.

~~(1) The~~

The existing California Public Records Act provides that, except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs. Among those records that are exempt from disclosure under the act is a document prepared by a local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

This bill would delete this provision and instead provide that a document prepared by or for a public agency that assesses vulnerability to terrorist attack or other criminal acts intended to disrupt the public

agency's operations, or harm or compromise the safety of the personnel or the public's right of access to the public building or facility, is exempt under the act, *subject to specified criteria*. It would also exempt ~~any~~ customer ~~list~~ lists provided to a *state or local police* agency by an alarm or security company *at the request of the agency*.

~~(2) The Bagley-Keene Open Meeting Act, until January 1, 2006, authorizes a state body to hold closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, subject to specified conditions.~~

~~This bill would additionally authorize a state body to hold closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment, including electronic data, under the jurisdiction of the state body.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6254 of the Government Code is
- 2 amended to read:
- 3 6254. Except as provided in Sections 6254.7 and 6254.13,
- 4 nothing in this chapter shall be construed to require disclosure of
- 5 records that are any of the following:
- 6 (a) Preliminary drafts, notes, or interagency or intra-agency
- 7 memoranda that are not retained by the public agency in the
- 8 ordinary course of business, provided that the public interest in
- 9 withholding those records clearly outweighs the public interest in
- 10 disclosure.
- 11 (b) Records pertaining to pending litigation to which the public
- 12 agency is a party, or to claims made pursuant to Division 3.6
- 13 (commencing with Section 810), until the pending litigation or
- 14 claim has been finally adjudicated or otherwise settled.
- 15 (c) Personnel, medical, or similar files, the disclosure of which
- 16 would constitute an unwarranted invasion of personal privacy.
- 17 (d) Contained in or related to any of the following:
- 18 (1) Applications filed with any state agency responsible for the
- 19 regulation or supervision of the issuance of securities or of

1 financial institutions, including, but not limited to, banks, savings
2 and loan associations, industrial loan companies, credit unions,
3 and insurance companies.

4 (2) Examination, operating, or condition reports prepared by,
5 on behalf of, or for the use of, any state agency referred to in
6 paragraph (1).

7 (3) Preliminary drafts, notes, or interagency or intra-agency
8 communications prepared by, on behalf of, or for the use of, any
9 state agency referred to in paragraph (1).

10 (4) Information received in confidence by any state agency
11 referred to in paragraph (1).

12 (e) Geological and geophysical data, plant production data, and
13 similar information relating to utility systems development, or
14 market or crop reports, that are obtained in confidence from any
15 person.

16 (f) Records of complaints to, or investigations conducted by, or
17 records of intelligence information or security procedures of, the
18 office of the Attorney General and the Department of Justice, and
19 any state or local police agency, or any investigatory or security
20 files compiled by any other state or local police agency, or any
21 investigatory or security files compiled by any other state or local
22 agency for correctional, law enforcement, or licensing purposes,
23 except that state and local law enforcement agencies shall disclose
24 the names and addresses of persons involved in, or witnesses other
25 than confidential informants to, the incident, the description of any
26 property involved, the date, time, and location of the incident, all
27 diagrams, statements of the parties involved in the incident, the
28 statements of all witnesses, other than confidential informants, to
29 the victims of an incident, or an authorized representative thereof,
30 an insurance carrier against which a claim has been or might be
31 made, and any person suffering bodily injury or property damage
32 or loss, as the result of the incident caused by arson, burglary, fire,
33 explosion, larceny, robbery, carjacking, vandalism, vehicle theft,
34 or a crime as defined by subdivision (c) of Section 13960, unless
35 the disclosure would endanger the safety of a witness or other
36 person involved in the investigation, or unless disclosure would
37 endanger the successful completion of the investigation or a
38 related investigation. However, nothing in this division shall
39 require the disclosure of that portion of those investigative files
40 that reflect the analysis or conclusions of the investigating officer.

1 *Customer lists provided to a state or local police agency by an*
2 *alarm or security company at the request of the agency shall be*
3 *construed to be records subject to this subdivision.*

4 Notwithstanding any other provision of this subdivision, state
5 and local law enforcement agencies shall make public the
6 following information, except to the extent that disclosure of a
7 particular item of information would endanger the safety of a
8 person involved in an investigation or would endanger the
9 successful completion of the investigation or a related
10 investigation:

11 (1) The full name and occupation of every individual arrested
12 by the agency, the individual's physical description including date
13 of birth, color of eyes and hair, sex, height and weight, the time and
14 date of arrest, the time and date of booking, the location of the
15 arrest, the factual circumstances surrounding the arrest, the
16 amount of bail set, the time and manner of release or the location
17 where the individual is currently being held, and all charges the
18 individual is being held upon, including any outstanding warrants
19 from other jurisdictions and parole or probation holds.

20 (2) Subject to the restrictions imposed by Section 841.5 of the
21 Penal Code, the time, substance, and location of all complaints or
22 requests for assistance received by the agency and the time and
23 nature of the response thereto, including, to the extent the
24 information regarding crimes alleged or committed or any other
25 incident investigated is recorded, the time, date, and location of
26 occurrence, the time and date of the report, the name and age of the
27 victim, the factual circumstances surrounding the crime or
28 incident, and a general description of any injuries, property, or
29 weapons involved. The name of a victim of any crime defined by
30 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
31 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
32 may be withheld at the victim's request, or at the request of the
33 victim's parent or guardian if the victim is a minor. When a person
34 is the victim of more than one crime, information disclosing that
35 the person is a victim of a crime defined by Section 220, 261,
36 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6,
37 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the
38 request of the victim, or the victim's parent or guardian if the
39 victim is a minor, in making the report of the crime, or of any crime

1 or incident accompanying the crime, available to the public in
2 compliance with the requirements of this paragraph.

3 (3) Subject to the restrictions of Section 841.5 of the Penal
4 Code and this subdivision, the current address of every individual
5 arrested by the agency and the current address of the victim of a
6 crime, where the requester declares under penalty of perjury that
7 the request is made for a scholarly, journalistic, political, or
8 governmental purpose, or that the request is made for investigation
9 purposes by a licensed private investigator as described in Chapter
10 11.3 (commencing with Section 7512) of Division 3 of the
11 Business and Professions Code, except that the address of the
12 victim of any crime defined by Section 220, 261, 261.5, 262, 264,
13 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7,
14 422.75, or 646.9 of the Penal Code shall remain confidential.
15 Address information obtained pursuant to this paragraph shall not
16 be used directly or indirectly to sell a product or service to any
17 individual or group of individuals, and the requester shall execute
18 a declaration to that effect under penalty of perjury.

19 (g) Test questions, scoring keys, and other examination data
20 used to administer a licensing examination, examination for
21 employment, or academic examination, except as provided for in
22 Chapter 3 (commencing with Section 99150) of Part 65 of the
23 Education Code.

24 (h) The contents of real estate appraisals or engineering or
25 feasibility estimates and evaluations made for or by the state or
26 local agency relative to the acquisition of property, or to
27 prospective public supply and construction contracts, until all of
28 the property has been acquired or all of the contract agreement
29 obtained. However, the law of eminent domain shall not be
30 affected by this provision.

31 (i) Information required from any taxpayer in connection with
32 the collection of local taxes that is received in confidence and the
33 disclosure of the information to other persons would result in
34 unfair competitive disadvantage to the person supplying the
35 information.

36 (j) Library circulation records kept for the purpose of
37 identifying the borrower of items available in libraries, and library
38 and museum materials made or acquired and presented solely for
39 reference or exhibition purposes. The exemption in this

1 subdivision shall not apply to records of fines imposed on the
2 borrowers.

3 (k) Records, the disclosure of which is exempted or prohibited
4 pursuant to federal or state law, including, but not limited to,
5 provisions of the Evidence Code relating to privilege.

6 (l) Correspondence of and to the Governor or employees of the
7 Governor's office or in the custody of or maintained by the
8 Governor's Legal Affairs Secretary, provided that public records
9 shall not be transferred to the custody of the Governor's Legal
10 Affairs Secretary to evade the disclosure provisions of this chapter.

11 (m) In the custody of or maintained by the Legislative Counsel,
12 except those records in the public database maintained by the
13 Legislative Counsel that are described in Section 10248.

14 (n) Statements of personal worth or personal financial data
15 required by a licensing agency and filed by an applicant with the
16 licensing agency to establish his or her personal qualification for
17 the license, certificate, or permit applied for.

18 (o) Financial data contained in applications for financing under
19 Division 27 (commencing with Section 44500) of the Health and
20 Safety Code, where an authorized officer of the California
21 Pollution Control Financing Authority determines that disclosure
22 of the financial data would be competitively injurious to the
23 applicant and the data is required in order to obtain guarantees
24 from the United States Small Business Administration. The
25 California Pollution Control Financing Authority shall adopt rules
26 for review of individual requests for confidentiality under this
27 section and for making available to the public those portions of an
28 application that are subject to disclosure under this chapter.

29 (p) Records of state agencies related to activities governed by
30 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
31 (commencing with Section 3525), and Chapter 12 (commencing
32 with Section 3560) of Division 4 of Title 1, that reveal a state
33 agency's deliberative processes, impressions, evaluations,
34 opinions, recommendations, meeting minutes, research, work
35 products, theories, or strategy, or that provide instruction, advice,
36 or training to employees who do not have full collective bargaining
37 and representation rights under these chapters. Nothing in this
38 subdivision shall be construed to limit the disclosure duties of a
39 state agency with respect to any other records relating to the



1 activities governed by the employee relations acts referred to in
2 this subdivision.

3 (q) Records of state agencies related to activities governed by
4 Article 2.6 (commencing with Section 14081), Article 2.8
5 (commencing with Section 14087.5), and Article 2.91
6 (commencing with Section 14089) of Chapter 7 of Part 3 of
7 Division 9 of the Welfare and Institutions Code, that reveal the
8 special negotiator's deliberative processes, discussions,
9 communications, or any other portion of the negotiations with
10 providers of health care services, impressions, opinions,
11 recommendations, meeting minutes, research, work product,
12 theories, or strategy, or that provide instruction, advice, or training
13 to employees.

14 Except for the portion of a contract containing the rates of
15 payment, contracts for inpatient services entered into pursuant to
16 these articles, on or after April 1, 1984, shall be open to inspection
17 one year after they are fully executed. In the event that a contract
18 for inpatient services that is entered into prior to April 1, 1984, is
19 amended on or after April 1, 1984, the amendment, except for any
20 portion containing the rates of payment, shall be open to inspection
21 one year after it is fully executed. If the California Medical
22 Assistance Commission enters into contracts with health care
23 providers for other than inpatient hospital services, those contracts
24 shall be open to inspection one year after they are fully executed.

25 Three years after a contract or amendment is open to inspection
26 under this subdivision, the portion of the contract or amendment
27 containing the rates of payment shall be open to inspection.

28 Notwithstanding any other provision of law, the entire contract
29 or amendment shall be open to inspection by the Joint Legislative
30 Audit Committee. The committee shall maintain the
31 confidentiality of the contracts and amendments until the time a
32 contract or amendment is fully open to inspection by the public.

33 (r) Records of Native American graves, cemeteries, and sacred
34 places maintained by the Native American Heritage Commission.

35 (s) A final accreditation report of the Joint Commission on
36 Accreditation of Hospitals that has been transmitted to the State
37 Department of Health Services pursuant to subdivision (b) of
38 Section 1282 of the Health and Safety Code.

39 (t) Records of a local hospital district, formed pursuant to
40 Division 23 (commencing with Section 32000) of the Health and

1 Safety Code, or the records of a municipal hospital, formed
2 pursuant to Article 7 (commencing with Section 37600) or Article
3 8 (commencing with Section 37650) of Chapter 5 of Division 3 of
4 Title 4 of this code, that relate to any contract with an insurer or
5 nonprofit hospital service plan for inpatient or outpatient services
6 for alternative rates pursuant to Section 10133 or 11512 of the
7 Insurance Code. However, the record shall be open to inspection
8 within one year after the contract is fully executed.

9 (u) (1) Information contained in applications for licenses to
10 carry firearms issued pursuant to Section 12050 of the Penal Code
11 by the sheriff of a county or the chief or other head of a municipal
12 police department that indicates when or where the applicant is
13 vulnerable to attack or that concerns the applicant's medical or
14 psychological history or that of members of his or her family.

15 (2) The home address and telephone number of peace officers,
16 judges, court commissioners, and magistrates that are set forth in
17 applications for licenses to carry firearms issued pursuant to
18 Section 12050 of the Penal Code by the sheriff of a county or the
19 chief or other head of a municipal police department.

20 (3) The home address and telephone number of peace officers,
21 judges, court commissioners, and magistrates that are set forth in
22 licenses to carry firearms issued pursuant to Section 12050 of the
23 Penal Code by the sheriff of a county or the chief or other head of
24 a municipal police department.

25 (v) (1) Records of the Major Risk Medical Insurance Program
26 related to activities governed by Part 6.3 (commencing with
27 Section 12695) and Part 6.5 (commencing with Section 12700) of
28 Division 2 of the Insurance Code, and that reveal the deliberative
29 processes, discussions, communications, or any other portion of
30 the negotiations with health plans, or the impressions, opinions,
31 recommendations, meeting minutes, research, work product,
32 theories, or strategy of the board or its staff, or records that provide
33 instructions, advice, or training to employees.

34 (2) (A) Except for the portion of a contract that contains the
35 rates of payment, contracts for health coverage entered into
36 pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5
37 (commencing with Section 12700) of Division 2 of the Insurance
38 Code, on or after July 1, 1991, shall be open to inspection one year
39 after they have been fully executed.

1 (B) In the event that a contract for health coverage that is
2 entered into prior to July 1, 1991, is amended on or after July 1,
3 1991, the amendment, except for any portion containing the rates
4 of payment, shall be open to inspection one year after the
5 amendment has been fully executed.

6 (3) Three years after a contract or amendment is open to
7 inspection pursuant to this subdivision, the portion of the contract
8 or amendment containing the rates of payment shall be open to
9 inspection.

10 (4) Notwithstanding any other provision of law, the entire
11 contract or amendments to a contract shall be open to inspection
12 by the Joint Legislative Audit Committee. The committee shall
13 maintain the confidentiality of the contracts and amendments
14 thereto, until the contract or amendments to a contract is open to
15 inspection pursuant to paragraph (3).

16 (w) (1) Records of the Major Risk Medical Insurance Program
17 related to activities governed by Chapter 14 (commencing with
18 Section 10700) of Part 2 of Division 2 of the Insurance Code, and
19 that reveal the deliberative processes, discussions,
20 communications, or any other portion of the negotiations with
21 health plans, or the impressions, opinions, recommendations,
22 meeting minutes, research, work product, theories, or strategy of
23 the board or its staff, or records that provide instructions, advice,
24 or training to employees.

25 (2) Except for the portion of a contract that contains the rates
26 of payment, contracts for health coverage entered into pursuant to
27 Chapter 14 (commencing with Section 10700) of Part 2 of
28 Division 2 of the Insurance Code, on or after January 1, 1993, shall
29 be open to inspection one year after they have been fully executed.

30 (3) Notwithstanding any other provision of law, the entire
31 contract or amendments to a contract shall be open to inspection
32 by the Joint Legislative Audit Committee. The committee shall
33 maintain the confidentiality of the contracts and amendments
34 thereto, until the contract or amendments to a contract is open to
35 inspection pursuant to paragraph (2).

36 (x) Financial data contained in applications for registration, or
37 registration renewal, as a service contractor filed with the Director
38 of the Department of Consumer Affairs pursuant to Chapter 20
39 (commencing with Section 9800) of Division 3 of the Business and
40 Professions Code, for the purpose of establishing the service

1 contractor's net worth, or financial data regarding the funded
2 accounts held in escrow for service contracts held in force in this
3 state by a service contractor.

4 (y) (1) Records of the Managed Risk Medical Insurance Board
5 related to activities governed by Part 6.2 (commencing with
6 Section 12693) of Division 2 of the Insurance Code, and that
7 reveal the deliberative processes, discussions, communications, or
8 any other portion of the negotiations with health plans, or the
9 impressions, opinions, recommendations, meeting minutes,
10 research, work product, theories, or strategy of the board or its
11 staff, or records that provide instructions, advice, or training to
12 employees.

13 (2) (A) Except for the portion of a contract that contains the
14 rates of payment, contracts entered into pursuant to Part 6.2
15 (commencing with Section 12693) of Division 2 of the Insurance
16 Code, on or after January 1, 1998, shall be open to inspection one
17 year after they have been fully executed.

18 (B) In the event that a contract entered into pursuant to Part 6.2
19 (commencing with Section 12693) of Division 2 of the Insurance
20 Code is amended, the amendment shall be open to inspection one
21 year after the amendment has been fully executed.

22 (3) Three years after a contract or amendment is open to
23 inspection pursuant to this subdivision, the portion of the contract
24 or amendment containing the rates of payment shall be open to
25 inspection.

26 (4) Notwithstanding any other provision of law, the entire
27 contract or amendments to a contract shall be open to inspection
28 by the Joint Legislative Audit Committee. The committee shall
29 maintain the confidentiality of the contracts and amendments
30 thereto until the contract or amendments to a contract are open to
31 inspection pursuant to paragraph (2) or (3).

32 (z) Records obtained pursuant to paragraph (2) of subdivision
33 (c) of Section 2891.1 of the Public Utilities Code.

34 (aa) *✱ If the public agency in question determines that the*
35 *public interest served by nondisclosure clearly outweighs the*
36 *public interest served by disclosure, a document prepared by or for*
37 *a public agency that assesses vulnerability to terrorist attack or*
38 *other criminal acts intended to disrupt the public agency's*
39 *operations, or harm or compromise the safety of the personnel or*
40 *the public's right of access to the public building or facility:*

~~(ab) Any customer list provided to a local agency by an alarm or security company, or emergency response plans that are the product of a completed vulnerability assessment. Once the public agency has determined that the threat of terrorist attack or other criminal acts has passed, the vulnerability assessment or emergency response plan, or both, shall be opened to public inspection, unless the public agency determines the public interest served by nondisclosure continues to clearly outweigh the public interest served by disclosure.~~

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

~~SEC. 2. Section 11126 of the Government Code, as amended by Section 1 of Chapter 1113 of the Statutes of 2002, is amended to read:~~

~~11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.~~

~~(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.~~

~~(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.~~

~~(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.~~

~~(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (c) of Section 4 of Article VII of the California Constitution.~~

~~(c) Nothing in this article shall be construed to do any of the following:~~

~~(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.~~

~~(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant’s qualifications for licensure and an inquiry specifically related to the state body’s enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.~~

~~(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.~~

~~(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.~~

1 ~~(5) Prevent any closed session to consider the conferring of~~
2 ~~honorary degrees, or gifts, donations, and bequests that the donor~~
3 ~~or proposed donor has requested in writing to be kept confidential.~~

4 ~~(6) Prevent the Alcoholic Beverage Control Appeals Board~~
5 ~~from holding a closed session for the purpose of holding a~~
6 ~~deliberative conference as provided in Section 11125.~~

7 ~~(7) (A) Prevent a state body from holding closed sessions with~~
8 ~~its negotiator prior to the purchase, sale, exchange, or lease of real~~
9 ~~property by or for the state body to give instructions to its~~
10 ~~negotiator regarding the price and terms of payment for the~~
11 ~~purchase, sale, exchange, or lease.~~

12 ~~(B) However, prior to the closed session, the state body shall~~
13 ~~hold an open and public session in which it identifies the real~~
14 ~~property or real properties that the negotiations may concern and~~
15 ~~the person or persons with whom its negotiator may negotiate.~~

16 ~~(C) For purposes of this paragraph, the negotiator may be a~~
17 ~~member of the state body.~~

18 ~~(D) For purposes of this paragraph, “lease” includes renewal~~
19 ~~or renegotiation of a lease.~~

20 ~~(E) Nothing in this paragraph shall preclude a state body from~~
21 ~~holding a closed session for discussions regarding eminent domain~~
22 ~~proceedings pursuant to subdivision (c).~~

23 ~~(8) Prevent the California Postsecondary Education~~
24 ~~Commission from holding closed sessions to consider matters~~
25 ~~pertaining to the appointment or termination of the Director of the~~
26 ~~California Postsecondary Education Commission.~~

27 ~~(9) Prevent the Council for Private Postsecondary and~~
28 ~~Vocational Education from holding closed sessions to consider~~
29 ~~matters pertaining to the appointment or termination of the~~
30 ~~Executive Director of the Council for Private Postsecondary and~~
31 ~~Vocational Education.~~

32 ~~(10) Prevent the Franchise Tax Board from holding closed~~
33 ~~sessions for the purpose of discussion of confidential tax returns~~
34 ~~or information the public disclosure of which is prohibited by law;~~
35 ~~or from considering matters pertaining to the appointment or~~
36 ~~removal of the Executive Officer of the Franchise Tax Board.~~

37 ~~(11) Require the Franchise Tax Board to notice or disclose any~~
38 ~~confidential tax information considered in closed sessions, or~~
39 ~~documents executed in connection therewith, the public disclosure~~
40 ~~of which is prohibited pursuant to Article 2 (commencing with~~

~~1 Section 19542) of Chapter 7 of Part 10.2 of the Revenue and
2 Taxation Code.~~

~~3 (12) Prevent the Board of Corrections from holding closed
4 sessions when considering reports of crime conditions under
5 Section 6027 of the Penal Code.~~

~~6 (13) Prevent the State Air Resources Board from holding
7 closed sessions when considering the proprietary specifications
8 and performance data of manufacturers.~~

~~9 (14) Prevent the State Board of Education or the
10 Superintendent of Public Instruction, or any committee advising
11 the board or the superintendent, from holding closed sessions on
12 those portions of its review of assessment instruments pursuant to
13 Chapter 5 (commencing with Section 60600) of, or pursuant to
14 Chapter 8 (commencing with Section 60850) of, Part 33 of the
15 Education Code during which actual test content is reviewed and
16 discussed. The purpose of this provision is to maintain the
17 confidentiality of the assessments under review.~~

~~18 (15) Prevent the California Integrated Waste Management
19 Board or its auxiliary committees from holding closed sessions for
20 the purpose of discussing confidential tax returns, discussing trade
21 secrets or confidential or proprietary information in its possession,
22 or discussing other data, the public disclosure of which is
23 prohibited by law.~~

~~24 (16) Prevent a state body that invests retirement, pension, or
25 endowment funds from holding closed sessions when considering
26 investment decisions. For purposes of consideration of
27 shareholder voting on corporate stocks held by the state body,
28 closed sessions for the purposes of voting may be held only with
29 respect to election of corporate directors, election of independent
30 auditors, and other financial issues that could have a material effect
31 on the net income of the corporation. For the purpose of real
32 property investment decisions that may be considered in a closed
33 session pursuant to this paragraph, a state body shall also be
34 exempt from the provisions of paragraph (7) relating to the
35 identification of real properties prior to the closed session.~~

~~36 (17) Prevent a state body, or boards, commissions,
37 administrative officers, or other representatives that may properly
38 be designated by law or by a state body, from holding closed
39 sessions with its representatives in discharging its responsibilities
40 under Chapter 10 (commencing with Section 3500), Chapter 10.3~~

~~(commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.~~

~~(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, under the jurisdiction of, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, under the jurisdiction of, or controlled by the state body.~~

~~(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.~~

~~(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.~~

~~(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.~~

~~(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.~~

~~(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions~~

~~1 against any person or entity under the jurisdiction of the
2 commission.~~

~~3 (c) (1) Nothing in this article shall be construed to prevent a
4 state body, based on the advice of its legal counsel, from holding
5 a closed session to confer with, or receive advice from, its legal
6 counsel regarding pending litigation when discussion in open
7 session concerning those matters would prejudice the position of
8 the state body in the litigation.~~

~~9 (2) For purposes of this article, all expressions of the
10 lawyer-client privilege other than those provided in this
11 subdivision are hereby abrogated. This subdivision is the
12 exclusive expression of the lawyer-client privilege for purposes of
13 conducting closed session meetings pursuant to this article. For
14 purposes of this subdivision, litigation shall be considered pending
15 when any of the following circumstances exist:~~

~~16 (A) An adjudicatory proceeding before a court, an
17 administrative body exercising its adjudicatory authority, a
18 hearing officer, or an arbitrator, to which the state body is a party,
19 has been initiated formally.~~

~~20 (B) (i) A point has been reached where, in the opinion of the
21 state body on the advice of its legal counsel, based on existing facts
22 and circumstances, there is a significant exposure to litigation
23 against the state body.~~

~~24 (ii) Based on existing facts and circumstances, the state body
25 is meeting only to decide whether a closed session is authorized
26 pursuant to clause (i).~~

~~27 (C) (i) Based on existing facts and circumstances, the state
28 body has decided to initiate or is deciding whether to initiate
29 litigation.~~

~~30 (ii) The legal counsel of the state body shall prepare and submit
31 to it a memorandum stating the specific reasons and legal authority
32 for the closed session. If the closed session is pursuant to paragraph
33 (1), the memorandum shall include the title of the litigation. If the
34 closed session is pursuant to subparagraph (A) or (B), the
35 memorandum shall include the existing facts and circumstances on
36 which it is based. The legal counsel shall submit the memorandum
37 to the state body prior to the closed session, if feasible, and in any
38 case no later than one week after the closed session. The
39 memorandum shall be exempt from disclosure pursuant to Section
40 6254.25.~~

1 ~~(iii) For purposes of this subdivision, “litigation” includes any~~
2 ~~adjudicatory proceeding, including eminent domain, before a~~
3 ~~court, administrative body exercising its adjudicatory authority,~~
4 ~~hearing officer, or arbitrator.~~

5 ~~(iv) Disclosure of a memorandum required under this~~
6 ~~subdivision shall not be deemed as a waiver of the lawyer-client~~
7 ~~privilege, as provided for under Article 3 (commencing with~~
8 ~~Section 950) of Chapter 4 of Division 8 of the Evidence Code.~~

9 ~~(f) In addition to subdivisions (a), (b), and (c), nothing in this~~
10 ~~article shall be construed to do any of the following:~~

11 ~~(1) Prevent a state body operating under a joint powers~~
12 ~~agreement for insurance pooling from holding a closed session to~~
13 ~~discuss a claim for the payment of tort liability or public liability~~
14 ~~losses incurred by the state body or any member agency under the~~
15 ~~joint powers agreement.~~

16 ~~(2) Prevent the examining committee established by the State~~
17 ~~Board of Forestry and Fire Protection, pursuant to Section 763 of~~
18 ~~the Public Resources Code, from conducting a closed session to~~
19 ~~consider disciplinary action against an individual professional~~
20 ~~forester prior to the filing of an accusation against the forester~~
21 ~~pursuant to Section 11503.~~

22 ~~(3) Prevent an administrative committee established by the~~
23 ~~California Board of Accountancy pursuant to Section 5020 of the~~
24 ~~Business and Professions Code from conducting a closed session~~
25 ~~to consider disciplinary action against an individual accountant~~
26 ~~prior to the filing of an accusation against the accountant pursuant~~
27 ~~to Section 11503. Nothing in this article shall be construed to~~
28 ~~prevent an examining committee established by the California~~
29 ~~Board of Accountancy pursuant to Section 5023 of the Business~~
30 ~~and Professions Code from conducting a closed hearing to~~
31 ~~interview an individual applicant or accountant regarding the~~
32 ~~applicant’s qualifications.~~

33 ~~(4) Prevent a state body, as defined in subdivision (b) of Section~~
34 ~~11121, from conducting a closed session to consider any matter~~
35 ~~that properly could be considered in closed session by the state~~
36 ~~body whose authority it exercises.~~

37 ~~(5) Prevent a state body, as defined in subdivision (d) of Section~~
38 ~~11121, from conducting a closed session to consider any matter~~
39 ~~that properly could be considered in a closed session by the body~~

1 defined as a state body pursuant to subdivision (a) or (b) of Section
2 11121.

3 (6) Prevent a state body, as defined in subdivision (c) of Section
4 11121, from conducting a closed session to consider any matter
5 that properly could be considered in a closed session by the state
6 body it advises.

7 (7) Prevent the State Board of Equalization from holding
8 closed sessions for either of the following:

9 (A) When considering matters pertaining to the appointment or
10 removal of the Executive Secretary of the State Board of
11 Equalization.

12 (B) For the purpose of hearing confidential taxpayer appeals or
13 data, the public disclosure of which is prohibited by law.

14 (8) Require the State Board of Equalization to disclose any
15 action taken in closed session or documents executed in
16 connection with that action, the public disclosure of which is
17 prohibited by law pursuant to Sections 15619 and 15641 of this
18 code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455,
19 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of
20 the Revenue and Taxation Code.

21 (9) Prevent the California Earthquake Prediction Evaluation
22 Council, or other body appointed to advise the Director of the
23 Office of Emergency Services or the Governor concerning matters
24 relating to volcanic or earthquake predictions, from holding closed
25 sessions when considering the evaluation of possible predictions.

26 (g) This article does not prevent either of the following:

27 (1) The Teachers' Retirement Board or the Board of
28 Administration of the Public Employees' Retirement System from
29 holding closed sessions when considering matters pertaining to the
30 recruitment, appointment, employment, or removal of the chief
31 executive officer or when considering matters pertaining to the
32 recruitment or removal of the Chief Investment Officer of the State
33 Teachers' Retirement System or the Public Employees'
34 Retirement System.

35 (2) The Commission on Teacher Credentialing from holding
36 closed sessions when considering matters relating to the
37 recruitment, appointment, or removal of its executive director.

38 (h) This section shall remain in effect only until January 1,
39 2006, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, 2006, deletes or extends that date.
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